IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1780 of 1999
in
SPECIAL CIVIL APPLICATION No 427 of 1982
with
CIVIL APPLICATION No 211 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SH SOLANKI

Appearance:

1. LETTERS PATENT APPEAL No. 1780 of 1999
MR SN SHELAT, AG with MR AD OZA, GP
for the Appellants
MR DIPAK C RAVAL, Advocate for the Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE K.M.MEHTA

Date of decision: 14/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. Admit. Mr. D.C. Raval, learned counsel waives service and appears for the respondents, including the heirs of the respondent no. 2 who are ordered to be brought on record by order made in Civil Application No. 5649 of 2003.

#. The appeal is directed against the judgment and order of the learned Single Judge, made on 18th March, 1994 by which it was directed that they should be confirmed from the date of their promotion and consequential benefits may be given to them.

#. The petitioners were working as Police Sub-Inspectors. According to them, they were entitled to be considered for the post of Police Sub-Inspector on the basis of the date of their promotion as Police Sub-Inspector on the same footing as was done in the case of direct recruit Police Sub-Inspectors. In para-18(A) of the petition, the petitioners had prayed for a declaration that para 61(1), (8), (9) and (10) and Para-117 of the Gujarat Police Manual should be declared as illegal and unconstitutional. According to the petitioners, these provisions were violative of the provisions of the Bombay Police Act and the rules made thereunder.

#. It appears from the impugned decision that the learned Single Judge has not taken into consideration the challenge of the petitioners against the said provisions of the Police Manual. It also appears that the government had, under Section 5(b) of the Bombay Police Act, 1951 made rules called "Police Sub-Inspector (Unarmed) Recruitment Rules, 1980" which are in force with effect from 22nd May,1980. The learned Single Judge has, neither considered the provisions of the Manual which are referred to in detail in the petition, nor the said Rules framed under Section 5(b) of the Bombay Police Act, 1951 while disposing of the matter on the ground that the petitioners were entitled to confirmation from the date of their promotion.

#. It appears from para-61(9) of the Manual, which was the subject matter of the petition that, the Head Constables promoted without taking course at the Police

Training School were to be appointed substantively after they had been tried sufficiently long in officiating capacity. The expression "tried sufficiently long in officiating capacity" was significant in context of the fact that they were appointed without any probation period and, therefore, their work in the post of promotion without having undergone training was to be initially treated on the same footing as if they were on probation during which their performance was to be watched. Therefore, the provisions requiring checking up of performance of the Head Constable who is promoted as Police Sub-Inspector without undergoing the training course during the officiating period, which would mean a reasonable period of time ordinarily similar to the period of probation, cannot be said to be any arbitrary standard applied by the authorities before appointing such promotee substantively in the cadre of Sub-Inspectors. The distinction in three sources for recruitment to the cadre of Sub-Inspectors justifies the said course of action. The learned Single Judge has, however, without considering this aspect of the matter which was directly and substantially in issue by virtue of the averments made in the petition itself, ordered that the confirmation of the petitioners who were Head Constables promoted without undergoing the course at the Police Training School should relate back from the date of their promotion in officiating capacity.

#. The learned Advocate General, however has now submitted that since the original petitioner no. 2 has passed away and the original petitioner nos. 1 and 3 have already retired, the government does not want to withhold the benefit of the judgment of the learned Single Judge. The learned counsel for the respondents states that in this view of the matter, the respondents also do not press for their challenge against the validity of para 61(9) of the Manual or any other provisions having bearing on the giving of the date of confirmation to the original petitioners. We have already noticed hereinabove that the learned Single Judge has not in fact, considered the provisions of Para-61(9) which were challenged in the petition. Therefore, the decision of the learned Single Judge will not be treated as a precedent on interpretation of the provisions of the said Manual or the said Rules having bearing on the question of giving substantive appointment/confirmation date to the Head Constables promoted without undergoing the course at the Police Training School who were governed by Para 61(9) of the Manual or corresponding rule, if any. In view of this concession given on behalf of the State Government and the statement on behalf of

the respondents that they do not challenge the provisions of the Manual, we are not interfering with the impugned decision, subject to the above clarification. The appeal is, therefore, dismissed with no order as to costs. Civil Application is rejected in view of the order made in the appeal.

[R.K. ABICHANDANI, J.]

[K.M. MEHTA, J.]
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